

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**EMMETT GRAHAM, JR.,**

**Plaintiff,**

**v.**

**Civil Action No. 2:05cv89**

**JOHN ASHCROFT, et. al.,**

**Defendants.**

**ORDER**

It will be recalled that on June 15, 2006, Magistrate Judge Seibert filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On June 28, 2006, Plaintiff filed his Objections to Magistrate's Report and Recommendation.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, brought pursuant to Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Upon review of the Plaintiff's objections, the Court finds that the Plaintiff has not raised any issues that were not already throughly considered and addressed by the Magistrate Judge in his Report and Recommendation. Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Plaintiff's Bivens Complaint be, and the same hereby is, **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. §§1915 and 1915A for failure to state a claim. It is further

**ORDERED** that, to the extent the Plaintiff is attempting to raise an allegation that he is being forced to work despite his medical conditions, the Plaintiff's amended complaint (Doc. 14) be, and the same hereby is, **DISMISSED WITHOUT PREJUDICE** for failure to exhaust his administrative remedies. It is further

**ORDERED** that the Plaintiff's request for court appointed counsel, injunctive relief and liens contained in his amended complaint be, and the same hereby is, **DENIED**.

The Court notes that the Plaintiff has filed several additional pleadings subsequent to the filing of the Magistrate Judge's Report and Recommendation. Many of these additional pleadings seek to amend Plaintiff's Complaint. Federal Rule of Civil Procedure 15(a) provides that "a party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party." The Court notes that Plaintiff has already once, on May 11, 2006, amended his Complaint. Accordingly, leave of the court is required for any further amendments. Upon careful review of the pleadings and the record before the Court, the Court finds that Plaintiff has not raised any issues of fact or law that were not already considered and addressed by the Magistrate Judge in his Report and Recommendation.

Any additional information that Plaintiff is attempting to place before the Court ultimately has no impact on the Magistrate Judge's findings and conclusions in his Report and Recommendation. Accordingly, in light of the Court adopting the Magistrate Judge's Report and Recommendation and dismissing Plaintiff's Complaint, it is further

**ORDERED** that all additional requests for relieve shall be, and the same hereby are, **DENIED** as moot. It is further

**ORDERED** that the above-styled action shall be **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Defendant. It is further

**ORDERED** that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

**ENTER:** May 23<sup>rd</sup>, 2007

/s/ Robert E. Maxwell  
United States District Judge